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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R06-OAR-2008-0633; FRL-9809-5]**

## **Approval and Promulgation of Implementation Plans; Arkansas; Interstate Transport of Fine Particulate Matter**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve portions of State Implementation Plan (SIP) submittals from the State of Arkansas to address Clean Air Act (CAA or Act) requirements that prohibit air emissions which will contribute significantly to nonattainment or interfere with maintenance in any other state for the 1997 and 2006 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). EPA proposes to determine that the existing SIP for Arkansas contains adequate provisions to prohibit air emissions from significantly contributing to nonattainment or interfering with maintenance of the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS (1997 PM<sub>2.5</sub> NAAQS) and the 2006 revised 24-hour PM<sub>2.5</sub> NAAQS (2006 PM<sub>2.5</sub> NAAQS) in any other state as required by section 110(a)(2)(D)(i)(I) of the Act.

**DATES:** Written comments must be received on or before **[Insert date 30 days from date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2008-0633, by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.
- Mail: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- Hand or Courier Delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket No. EPA-R06-OAR-2008-0633. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If

you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals related to this SIP revision, and which are part of the EPA docket, are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas, 72118-5317.

**FOR FURTHER INFORMATION CONTACT:** Carl Young, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6645; e-mail address *young.carl@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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## **I. Background**

### *A. Interstate Transport and the PM<sub>2.5</sub> NAAQS*

In 1997, we established new annual and 24-hour NAAQS for PM<sub>2.5</sub> of 15 micrograms per cubic meter (µg/m<sup>3</sup>) and 65 µg/m<sup>3</sup>, respectively (July 18, 1997, 62 FR 38652). In 2006, we

revised the 24-hour PM<sub>2.5</sub> NAAQS to 35 µg/m<sup>3</sup> (October 17, 2006, 71 FR 6114). Section 110(a)(2)(D)(i) of the CAA identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants with respect to a new or revised NAAQS. In this action for the state of Arkansas, we are addressing the first two elements of section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS.<sup>1</sup> The first element of section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate measures to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS prohibit any source or other type of emissions activity in the state from emitting pollutants that will “interfere with maintenance” of the applicable NAAQS in any other state.

*B. EPA Rules Addressing Interstate Transport for the 1997 and 2006 PM<sub>2.5</sub> NAAQS*

EPA has addressed the requirements of section 110(a)(2)(D)(i)(I) in past regulatory actions.<sup>2</sup> The final Cross-State Air Pollution Rule (Transport Rule) addressed the first two elements of CAA section 110(a)(2)(D)(i)(I) in the eastern United States with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS, the 1997 annual PM<sub>2.5</sub> NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). The Transport Rule was intended to replace the earlier Clean Air

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<sup>1</sup> This proposed action does not address the two elements of the transport SIP provision (in CAA section 110(a)(2)(D)(i)(II)) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. Previously we: (1) partially approved and partially disapproved the portion of the December 17, 2007 Arkansas submittal demonstrating that Arkansas emissions do not interfere with measures required to protect visibility in any other state for the 1997 PM<sub>2.5</sub> NAAQS (March 12, 2012, 77 FR 14604) and (2) disapproved the portion of the September 16, 2009 Arkansas submittal demonstrating that Arkansas emissions do not interfere with measures required to prevent significant deterioration in any other state for the 2006 PM<sub>2.5</sub> NAAQS (August 20, 2012, 77 FR 50033).

<sup>2</sup> See NOx SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

Interstate Rule (CAIR) which was judicially remanded.<sup>3</sup> See *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision to vacate the Transport Rule. See *EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir. 2012). The court also ordered EPA to continue implementing CAIR in the interim. On January 24, 2013, the D.C. Circuit issued an order denying all petitions for rehearing. On March 29, 2013, the United States asked the Supreme Court to review the *EME Homer City* decision. In the meantime, and unless the *EME Homer City* decision is reversed or otherwise modified, EPA intends to act in accordance with the opinion in *EME Homer City*.

### *C. Arkansas' submittals*

On December 17, 2007, Arkansas submitted a SIP revision to address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 PM<sub>2.5</sub> NAAQS. The submittal stated that the State met the requirements relating to significant contribution to nonattainment or interference with maintenance in another state for the 1997 PM<sub>2.5</sub> NAAQS based on CAIR and associated air quality modeling performed by EPA. The submittal also noted that Arkansas was not included in CAIR to address PM<sub>2.5</sub>. A September 16, 2009, submission stated that the SIP meets the requirements of CAA section 110(a)(2), including 110(a)(2)(D)(i)(I) for the 2006 PM<sub>2.5</sub> NAAQS. On March 20, 2013, the State submitted a letter to EPA serving as a technical supplement for the 2006 PM<sub>2.5</sub> NAAQS. The letter stated that because the more recent and improved air quality modeling evaluating interstate transport for the 2006 PM<sub>2.5</sub> NAAQS conducted by EPA for the Transport Rule is now available and supports the conclusion that emissions in Arkansas do not significantly contribute to nonattainment or interfere with

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<sup>3</sup> CAIR addressed the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour PM<sub>2.5</sub> NAAQS.

maintenance of the 2006 PM<sub>2.5</sub> NAAQS in any other State, it was being submitted as the basis for the conclusions in lieu of the previous technical information provided in the September 16, 2009 submission. The submittals and technical supplement document the State's assessments that Arkansas emissions will not contribute significantly to nonattainment, or interfere with maintenance, in any other state for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. The submittals and technical supplement are available electronically through the *www.regulations.gov* website (Docket No. EPA-R06-OAR-2008-0633).

## **II. EPA's Evaluation**

### *A. EPA's Approach for Evaluating Interstate Transport of Air Pollution*

To determine whether the CAA section 110(a)(2)(D)(i)(I) requirement is satisfied, EPA must determine whether a state's emissions contribute significantly to nonattainment or interfere with maintenance in downwind areas. If this factual finding is in the negative, then section 110(a)(2)(D)(i)(I) does not require any changes to a state's SIP. EPA is proposing to determine that the existing SIP for Arkansas is adequate to satisfy the requirements of 110(a)(2)(D)(i)(I) of the CAA to address interstate transport requirements with regard to the 1997 and 2006 PM<sub>2.5</sub> NAAQS. This proposed conclusion is based on air quality modeling originally conducted by EPA to quantify each individual eastern state's (including Arkansas') contributions to downwind nonattainment and maintenance areas during the rulemaking process for the Transport Rule.

In the Transport Rule rulemaking (proposal and final) process, EPA explained how nonattainment and maintenance receptors would be defined such that contribution to nonattainment and maintenance receptors could be evaluated.<sup>4</sup> EPA first identified

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<sup>4</sup> For our definition of both nonattainment and maintenance receptors see the Technical Support Documents for the final Transport Rule, including the "Technical Support Document (TSD) for the Transport Rule – Air Quality

nonattainment receptors and maintenance receptors, which are all monitoring sites that had PM<sub>2.5</sub> design values above the level of the 1997 annual PM<sub>2.5</sub> NAAQS (15 µg/m<sup>3</sup>) and 2006 24-hour PM<sub>2.5</sub> NAAQS (35 µg/m<sup>3</sup>) for certain analytic years. Then EPA prepared a 2005 emissions inventory which was the most recent year that EPA had a complete national inventory at that time. In the Transport Rule analysis, EPA also projected the inventory for the future year analysis for evaluating the culpability of interstate transport impacts.<sup>5</sup> The air quality modeling conducted for the Transport Rule then evaluated interstate contributions from emissions in upwind states to downwind nonattainment and maintenance receptors for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. Please see the Air Quality Modeling Final Rule Technical Support Document, June 2011 (Air Quality Modeling TSD) for the Transport Rule. Appendix D of this TSD details Arkansas' contribution data for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS for all downwind receptors.

EPA then used air quality thresholds to identify linkages between upwind states and downwind nonattainment and maintenance receptors. As detailed in EPA's Air Quality Modeling TSDs, EPA used a threshold of 1% of the NAAQS to identify these linkages. Our analysis for the Transport Rule found that the 1 percent threshold captures a high percentage of the total pollution transport affecting downwind states for PM<sub>2.5</sub>.<sup>6</sup> The air quality thresholds were therefore calculated as 1 percent of the NAAQS, which is 0.15 µg/m<sup>3</sup> for 1997 annual PM<sub>2.5</sub> NAAQS and 0.35 µg/m<sup>3</sup> for 2006 24-hour PM<sub>2.5</sub>. EPA found states projected to exceed this air quality threshold at one or more downwind nonattainment receptors emissions to be linked to all

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Modeling”, (the proposal TSD) June 2010, and the “Air Quality Modeling Final Rule Technical Support Document”, (Air Quality Modeling TSD) June 2011 (Docket No. EPA-HQ-OAR-2009-0491, Document Nos. EPA-HQ-OAR-2009-0491-0047 and EPA-HQ-OAR-2009-0491-4140).

<sup>5</sup> See *Id.*; Emissions Inventory Final Rule TSD, June 28, 2011. (Docket ID No. EPA-HQ-OAR-2009-0491, Document No. EPA-HQ-OAR-2009-0491-4522).

<sup>6</sup> See section IV.F (Analysis of Contributions Captured by Various Thresholds) of the Air Quality Modeling TSD.



such receptors, and therefore subject to further evaluation. EPA did not conduct further evaluation of emissions from states that were not linked to any downwind receptors.

The methodology and modeling used to analyze the impact of emissions from Arkansas and to identify potential linkages between Arkansas and downwind nonattainment and maintenance receptors with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS is described in further detail in the Air Quality Modeling TSDs. These documents can be found both in the electronic docket for the Transport Rule and the electronic docket for this action, and is available through the *www.regulations.gov* website.

#### *B. Evaluation of the State's Submittals*

EPA's evaluation confirms Arkansas' analysis provided in portions of the SIP submittals for the State of Arkansas submitted on December 17, 2007, and September 16, 2009, and the technical supplement submitted on March 20, 2013. The air quality modeling performed for the Transport Rule found that the impact from Arkansas emissions on both downwind nonattainment and maintenance receptors was less than the 1 percent threshold for both the 1997 and the 2006 PM<sub>2.5</sub> NAAQS. EPA therefore did not find emissions from Arkansas linked to any downwind nonattainment or maintenance receptors for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. EPA incorporates by reference into the docket for this action all of the technical information in the record for the proposed and final Transport Rule regarding the impact of emissions from Arkansas on both downwind nonattainment and maintenance receptors.

Below is a summary of the air quality modeling results for Arkansas from Tables IV-8 and IV-9 of EPA's Air Quality Modeling TSD regarding Arkansas's largest contribution to both downwind PM<sub>2.5</sub> nonattainment and maintenance areas.

**ARKANSAS' LARGEST CONTRIBUTION TO DOWNWIND PM<sub>2.5</sub> NONATTAINMENT AND  
MAINTENANCE AREAS**

<b>NAAQS</b>	<b>Air Quality Threshold (µg/m<sup>3</sup>)</b>	<b>Largest downwind contribution to nonattainment (µg/m<sup>3</sup>)</b>	<b>Largest downwind contribution to maintenance (µg/m<sup>3</sup>)</b>
1997 annual PM <sub>2.5</sub> NAAQS (15 µg/m <sup>3</sup> )	0.15	0.10	0.04
2006 24-hour PM <sub>2.5</sub> NAAQS (35 µg/m <sup>3</sup> )	0.35	0.24	0.23

Based on this analysis, we propose to approve the portions of the December 17, 2007 and September 16, 2009 Arkansas SIP submittals, and the technical supplement submitted on March 20, 2013, determining that the existing SIP for Arkansas contains adequate provisions to prohibit air emissions from contributing significantly to nonattainment or interfering with maintenance of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in any other state as required by CAA section 110(a)(2)(D)(i)(I).<sup>7</sup>

We believe it is appropriate to rely on the Transport Rule modeling even with the *EME Homer City* opinion vacating the rule. *EME Homer City Generation L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012).<sup>8</sup> Nothing in the *EME Homer City* opinion suggests that the air quality modeling on which our proposal relies is flawed or invalid for any reason. In addition, nothing in that opinion undermines or calls into question our proposed conclusion that, because emissions from Arkansas do not contribute more than one percent of the 1997 and 2006 PM<sub>2.5</sub> NAAQS to any downwind area with nonattainment or maintenance problems, Arkansas does not contribute significantly to nonattainment or interfere with maintenance in another state for these NAAQS.

<sup>7</sup> The form of the 1997 24-hour and the 2006 24-hour PM<sub>2.5</sub> NAAQS utilize the same methodology in determining the design value. Because the 2006 24-hour PM<sub>2.5</sub> NAAQS is lower and more protective than the 1997 24-hour PM<sub>2.5</sub> NAAQS, (35 µg/m<sup>3</sup> compared with 65 µg/m<sup>3</sup>), addressing the more stringent 2006 24-hour PM<sub>2.5</sub> NAAQS ensures that the 1997 24-hour NAAQS is also protected. Thus, we can rely upon the 1 percent threshold analysis used for the Transport Rule to evaluate both the 1997 and 2006 24-hour NAAQS.

<sup>8</sup> On March 29, 2013, EPA filed a petition asking the Supreme Court to review the *EME Homer City* decision.

Further, EPA is not proposing to rely on any requirements of the Transport Rule or emission reductions associated with that rule to support its conclusion that Arkansas has met its 110(a)(2)(D)(i)(I) obligations with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

*C. Section 110(l) of the Act*

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. The SIP submittals from the State of Arkansas contain no new regulatory provisions and do not affect any requirement in Arkansas' applicable implementation plan. Therefore, the submissions do not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. EPA has concluded, based on Arkansas' and EPA's technical analysis, that the existing Arkansas SIP is sufficient to meet the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

**III. Proposed Action**

We are proposing to approve portions of SIP submittals for the State of Arkansas submitted on December 17, 2007, and September 16, 2009, and the technical supplement submitted on March 20, 2013, to address interstate transport for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. Based on our evaluation we propose to approve the portions of the SIP submittals determining the existing SIP for Arkansas contains adequate provisions to prohibit air emissions from contributing significantly to nonattainment or interfering with maintenance of the 1997 and

2006 PM<sub>2.5</sub> NAAQS in any other state as required by CAA section 110(a)(2)(D)(i)(I). This action is being taken under section 110 of the Act.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 24, 2013

**Ron Curry,**

*Regional Administrator, Region 6.*

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